

### REMARKS

This is intended as a full and complete response to the Office Action dated September 13, 2004, having a shortened statutory period for response set to expire on December 13, 2004. Please reconsider the claims pending in the application for reasons discussed below.

In the specification, the paragraphs at page 2, line 7 and page 7, line 24 have been amended to correct minor editorial problems.

Claims 1-37 are pending in the application. Claims 1-37 remain pending following entry of this response. Claims 1-2, 4-5, 10, 12-13, 16, 20-23, 29-33 and 35 have been amended. Applicant submits that the amendments do not introduce new matter.

The Examiner states that the title of the invention is not descriptive. Applicant has amended the title (see above).

#### Claim Rejections - 35 USC § 112

Claims 20, 21, 33, 35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Applicant has made appropriate corrections.

Claims 12, 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner states that "it is unclear what the phrase 'a number of the restricted class available for purchase' refers to." Applicant respectfully traverses the rejection. The phrase objected to by the Examiner, "a number of the restricted class available for purchase", is not recited in claims 12 or 22. Withdrawal of the rejection is respectfully requested.

Claims 20, 21, 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner states that the phrase "initial number" lacks antecedent basis, as per claims 20, 33, 37. Applicant respectfully traverses the rejection. The Examiner rejects claims 20, 21, 37 but later refers to claims 20, 33, 37. Accordingly, it is not clear which claim(s) is being rejected, 21 or 33. It is believed that

claims 20, 33, 37 are rejected. Regarding claim 20 the present amendment is believed to obviate the rejection. Regarding claims 33 and 37 the antecedent basis for "the initial number" is found in claim 22, line 7 (original claim). Withdrawal of the rejection is respectfully requested.

Claims 29, 30, 32, 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner states that the "phrase 'the number of the remaining tickets' lacks antecedent basis..." and that "...it is unclear what the phrase 'the number' refers to." Applicant respectfully traverses the rejection. Claim 22 provides antecedent basis for two numbers: (1) an initial number of the restricted class of tickets; and (2) a number of remaining tickets of the restricted class. Therefore, subsequent references to "the initial number" is sufficiently distinct from "the number", where the latter refers to the remaining number. Specifically, the distinctness of "the number" is clear from the absence of the adjective "initial" and/or the subsequent qualifying language "of the remaining tickets". Accordingly, Applicant does not believe amendments are necessary. However, to ensure prosecution moves forward, and to ensure greater uniformity of claim language, Applicant has amended some of the rejected claims. Withdrawal of the rejection is respectfully requested.

#### Claim Rejections - 35 USC § 102

Claims 1-6 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by *Walker et al.* (5,897,620, hereinafter *Walker '620*). Applicant respectfully traverses this rejection.

The Examiner examines claim 1 as reciting a network, a database, client computers and an event server, and specifically denies any patentable weight to the functional limitations recited. Respectfully, Applicant submits that claim 1 has been improperly examined. "There is nothing inherently wrong with defining some part of an invention in functional terms." MPEP §2173.05(g), citing *In re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971). "Functional language does not, in and of itself, render a claim improper." (*Id.*) "A functional limitation must be evaluated and considered, just like any other limitation of the claimed, for what it fairly conveys to a person of ordinary

skill in the pertinent art in the context in which it is used." MPEP §2173.05(g). Particularly in the computer-related arts it is well-known to claim a computer in functional terms. The Examiner is directed to claim 76 of *Walker '620*, the Examiner's own cited art, which claims a system comprising a memory containing information and a processor configured to perform specified functions. If the functions are disregarded, the claim amounts to nothing more than a memory and a processor. Clearly, the functions were considered in examining the claim. Therefore, Applicant submits the rejection is improper and requests that the rejection be withdrawn and the claims be allowed.

Claims 1-7, 9-19, 22-26, 28-32 and 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by *Fare Play*. Applicant respectfully traverses this rejection.

*Fare Play* is directed to a demand-driven price adjustment system. The system of *Fare Play* periodically adjusts a price of an airline ticket in response to demand. *Fare Play* does not, however, adjust a number of restricted tickets available for purchase while keeping a ticket price constant, as claimed. In fact, maintaining a constant ticket price while changing the number of tickets available is fundamentally antithetical to *Fare Play* which discloses systems directed to stimulating sales by manipulating the sales price.

Therefore, Applicant submits that claims 1-7, 9-19, 22-26, 28-32 and 36-37 are patentable over *Fare Play*.

#### Claim Rejections - 35 USC § 103

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Walker* in view of *Web Ventures Announces version 4 of 'BookIt! PRO' — Gives Full Travel Agent Access to Airline Computer Reservations Systems over the Internet.* (hereinafter *BookIt! Pro*). Applicant respectfully traverses the rejection. *Walker '620* is believed to have been overcome for the reasons given above. Accordingly, the combination of *Walker* with any other reference is also believed to be overcome. Further, with regard to claim 7, Applicant notes that the Examiner initially rejects the claim on the basis of the combination of *Walker* and *BookIt! Pro*, but then argues that the combination of *Walker* and *DeMarcken et al.* would have been obvious. It is

therefore not clear which references the Examiner relies on as the basis for the rejection. If the Examiner believes that a rejection is still appropriate, Applicant respectfully requests clarification of the references being relied upon.

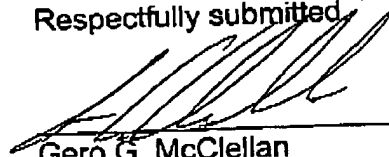
Claims 8 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Fare Play* in view of in view of *BookIt! Pro*. Applicant respectfully traverses this rejection. *Fare Play* is believed to have been overcome for the reasons given above. Accordingly, the combination of *Fare Play* and *BookIt! Pro* is also believed to have been overcome.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Fare Play* in view of Official Notice. Applicant respectfully traverses this rejection. *Fare Play* is believed to have been overcome for the reasons given above. Accordingly, the present rejection over *Fare Play* in view of Official Notice is also believed to have been overcome.

#### Conclusion

Having addressed all issues set out in the office action, Applicant respectfully submits that the claims are in condition for allowance and respectfully requests that the claims be allowed.

Respectfully submitted,



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